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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,777	10/09/2001	Max Schaldach	117163.00028	6887

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/06/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/06/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com
akron-docket@hotmail.com

Office Action Summary

Application No.

09/974,777

Applicant(s)

SCHALDACH ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,9,10,12,13,15-18,20,21,23,24,26,27,29,30,47,48,65,73-75 and 77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: APPENDIX.

Continuation of Disposition of Claims: Claims pending in the application are 1,2,5,6,9,10,12,13,15-18,20,21,23,24,26,27,29-32,34,35,37-40,42,43,45-50,52,53,55-58,60,61,63-65 and 67-85.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 31,32,34,35,37-40,42,43,45-50,52,53,55-58,60,61,63-65,67-72,76 and 78-85.

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Applicant's election with traverse of the species of figure 3 in the reply filed on June 19, 2006 is acknowledged. The traversal is on the ground(s) that some of the claims are generic to all of the species and some of the claims are "generic" to only some of the species. This is not found persuasive. First of all, a generic claim, by definition, reads on all of the species. Therefore, it is agreed that claims 1, 2, 5 and 6 are generic. However, the fact that some claims are generic (claims 1, 2, 5 and 6) and some claims read on a plurality of species simply does not make an election of species requirement improper.

The requirement is still deemed proper and is therefore made FINAL.

Claims 31, 32, 34, 35, 37-40, 42, 43, 45-50, 52, 53, 55-58, 60, 61, 63-65, 67-72, 76 and 78-85 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 19, 2006.

Claims 1, 2, 5, 6, 9, 10, 20, 21, 23, 24, 26, 27, 47 and 48 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alt (DE 19834956). Alt, as shown in the attached appendix (which is

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based on the equivalent U.S. Patent 6,398,805 only because this figure is clearer than the equivalent figure in the foreign patent), discloses bar elements and connecting bars wherein the first and second bar elements are entirely concave over the entire length of the bar element portion, and wherein all of the first and second bar element portions of the first annular support portion extend to an identical extent in the longitudinal direction. (Note that distance D1 is the same as distance D2 as shown in the attached appendix when the turning portions are not considered to be part of the bar element portions. When the turning portions are considered to be part of the bar element portions, then they clearly extend to an identical extent in the longitudinal direction since the turning portions at opposite ends of the bar element portions are the same distance from each other throughout the stent.) In any event, even if one bar element portion was longer than another, this claim limitation would be met since the claimed bar element portion could be considered to be only that portion of it that bar element that has the same length as the other bar element portion. Alternatively, it would have been obvious that the Alt first and second bar element portions of the first annular support portion extend to an identical extent in the longitudinal direction since figure 1 appears to show this. As

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to claim 5, the bar element portions are inherently adapted to keep stresses below a plastic deformation limit upon being moved to the implantation location by being curved in a such a way.

Claims 12, 13, 15-18, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Hoefer (DE 19840645). Alt fails to disclose the direction of curvature of the bar element portions changing in the longitudinal direction of the stent. However, Hoefer teaches that the direction of curvature of the bar element portions should change in the longitudinal direction of the stent (as shown in figure 2 wherein the curvature alternates between concave and convex in the longitudinal direction of the stent). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to change the direction of curvature of the Alt bar element portions so that it too would have this advantage.

Claims 65, 73 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Kveen et al. (6,261,319). As to claim 65, Alt fails to disclose the connecting bars engaging a central region of the bar element portions and being adapted to the curvature thereof. However, Kveen et al. teach that the connecting bars should be so

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constructed (e.g. connecting bar 1032 in figure 13). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to so shape the Alt connecting bars so that it too would have this advantage. As to claim 73, Alt fails to disclose connecting bars that are substantially rectilinear. However, Kveen et al., in figure 9, teach that the connecting bars on one end of the bar element portions at 621, 623 should be so shaped (such that they are short and rectilinear) as indicated in col. 11, line 28-31, apparently in order to obtain the advantage of improving the supporting ability of the stent. It would have been obvious to so shape the Alt connecting bars on one end of the bar element portions so that it too would have this advantage.

Claims 75 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Kveen et al. (6,261,319) as applied to claim 73 above, and further in view of Hoefer (DE 19840645) for the reasons set forth in two paragraphs above.

Applicant's arguments filed March 3, 2006 have been fully considered but they are not persuasive for the reasons set forth above. In addition, as to the argument on pages 18-19 of the remarks, the Hoefer bar element portions are clearly concave and

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convex (since they form a concavity at their top or bottom) and alternate between being concave and convex along the longitudinal axis of the stent.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the

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organization where this application or proceeding is assigned is
(571) 273-8300.

mht

A handwritten signature in black ink, appearing to read "Michael Thaler", with a stylized flourish at the end.

MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731

APPENDIX

BAR ELEMENT — CONNECTING BAR

TURNING
POINT

13 12

d

D_1

D_2

45

